

Message Text

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TO USMISSION USUN NEW YORK

INFO AMCONSUL CAPE TOWN

AMEMBASSY PRETORIA

AMCONSUL DURBAN

AMCONSUL JOHANNESBURG

AMEMBASSY LONDON LUSAKA

AMEMBASSY DAR ES SALAAM

AMEMBASSY ADDIS ABABA

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E.O. 11652: N/A

TAGS: PINT, SF, WA

SUBJECT: UN COUNCIL FOR NAMIBIA DECREE CONCERNING NATURAL
RESOURCES: PRESS GUIDANCE

1. THE FOLLOWING GUIDANCE MAY BE DRAWN UPON IN RESPONDING
TO ANY INQUIRIES CONCERNING THE SEPTEMBER 27 DECREE OF
THE COUNCIL FOR NAMIBIA. GUIDANCE IS AS FOLLOWS:

QUOTE: QUESTION: THE UN COUNCIL FOR NAMIBIA ISSUED ON
SEPTEMBER 27, 1974 AN EDICT BANNING THE EXPORT OF NATURAL
RESOURCES FROM NAMIBIA WITHOUT ITS PERMISSION AND
DECLARING THAT SUCH EXPORTS MAY BE SEIZED AND FORFEITED TO
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THE COUNCIL TO BE HELD IN TRUST FOR THE NAMIBIAN PEOPLE.

WHAT IS THE REACTION OF THE USG TO THIS ACTION BY THE UN COUNCIL FOR NAMIBIA?

ANSWER: THE COUNCIL FOR NAMIBIA WAS FORMED BY GENERAL ASSEMBLY RESOLUTION 2248 (1967) AFTER THE UN TERMINATED SOUTH AFRICA'S AUTHORITY TO ADMINISTER NAMIBIA. THE SAME RESOLUTION DIRECTED THE COUNCIL TO PROCEED IMMEDIATELY TO NAMIBIA AND GRANTED IT BROAD ADMINISTRATIVE POWERS ALL OF WHICH WERE "TO BE DISCHARGED IN THE TERRITORY". THE MOST OBVIOUS INTERPRETATION OF THIS PROVISION IS THAT THE COUNCIL CAN EXERCISE ITS ADMINISTRATIVE POWERS ONLY AFTER IT GAINS ADMISSION TO NAMIBIA. THE COUNCIL MAY CONTEND, HOWEVER, THAT THE PROVISION ENABLES IT TO EXERCISE POWERS OUTSIDE NAMIBIA WHICH HAVE EFFECT WITHIN THE TERRITORY. THE DRAFTING HISTORY OF THE RESOLUTION DOES NOT DISCLOSE ANY CONSENSUS ON THIS QUESTION. CONSEQUENTLY, WHILE THE COMPETENCE OF THE COUNCIL TO ISSUE ITS RECENT DECREE APPEARS DUBIOUS TO US, THE COUNCIL MAY BE CONTEMPLATING AN EFFORT TO BRING THIS ISSUE BEFORE A COURT AT SOME FUTURE DATE.

THE DEPARTMENT OF STATE PLANS TO TAKE NO ACTION AT THIS TIME AS A CONSEQUENCE OF THE COUNCIL'S DECREE AS IT IS NOT CERTAIN THAT THE DECREE IS A PROPER EXERCISE OF THE FUNCTIONS OF THE COUNCIL. HOWEVER, WE SHARE WITH THE COUNCIL ITS INTEREST IN DISCOURAGING NEW INVESTMENT IN NAMIBIA. SINCE 1970, THE UNITED STATES HAS DISCOURAGED INVESTMENT AND ADVISED PROSPECTIVE U.S. INVESTORS THAT, WITH RESPECT TO INVESTMENTS BASED ON RIGHTS ACQUIRED FROM THE SAG AFTER ITS AUTHORITY TO ADMINISTER THE TERRITORY WAS TERMINATED BY THE UN IN 1966, THE USG WOULD NOT PROTECT SUCH INVESTMENTS AGAINST CLAIMS OF A FUTURE LAWFUL GOVERNMENT OF NAMIBIA. EN QUOTE. KISSINGER

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